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7:26E-1.16 Receptor evaluation - ecological

(a) The person responsible for conducting the remediation shall conduct an ecological receptor evaluation as follows:

1. Determine if any environmentally sensitive natural resource, other than ground water:

- i. Are present on the site or area of concern;
- ii. Are adjacent to the site or area of concern; or
- iii. May be, have been, or are impacted by contamination from the site or area of concern; and

2. Determine if any contaminant concentration is present at the site or area of concern that exceeds any ecological screening criterion or any aquatic surface water quality standard.

(b) If an environmentally sensitive natural resource is identified pursuant to (a)1 above and contaminant concentrations are present at the site or area of concern that exceed any ecological screening criterion or any aquatic surface water quality standard, then the person responsible for conducting the remediation shall conduct a remedial investigation of ecological receptors pursuant to N.J.A.C. 7:26E-4.8.

(c) If no environmentally sensitive natural resource is identified pursuant to (a)1 above, or if no contaminant concentration at the site or area of concern exceeds any ecological screening criterion or any aquatic surface water quality standard, then a remedial investigation of ecological receptors is not required.

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that all sampling and laboratory analysis are conducted as follows:

1. Laboratories or companies involved in any laboratory or field activity that provide data of known quality must have all applicable certifications for the specific parameters or categories for which certification exists pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measures, N.J.A.C. 7:18;

2. For the analysis of samples for parameters or categories of parameters for which certification is not available pursuant to N.J.A.C. 7:18, the person responsible for conducting

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2. Use appropriate sample collection methods, but composite soil sampling shall not be used for site investigation sample collection; and

3. Use appropriate analytical methods.

(b) If the concentration of any contaminant in the soil exceeds any soil remediation standard, then the person responsible for conducting the remediation shall conduct a remedial investigation of the soil pursuant to N.J.A.C. 7:26E-4.2.

7:26E-3.5 Site investigation - ground water

(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall evaluate all potentially contaminated areas of concern to determine if there is the potential that ground water has been contaminated. At an area of concern where there is a potential that ground water has been contaminated, the person responsible for conducting the remediation shall conduct ground water sampling as follows:

1. Collect a sufficient number of ground water samples to evaluate for the presence of ground water contamination, biasing ground water sampling to the suspected locations of greatest contamination, both horizontally and vertically;

2. Use appropriate sampling methods; and

3. Use appropriate analytical methods.

(b) If the concentration of any contaminant in the ground water exceeds any ground water remediation standard, then the person responsible for conducting the remediation shall conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26-4.3.

7:26E-3.6 Site investigation - surface water and sediment

(a) If there is a potential that surface water has been impacted by the site, the person responsible for conducting the remediation who is subject to N.J.A.C. 3.3(b) shall determine if there is any evidence that contamination from the site has reached the surface water.

(b) If there is evidence that contamination from the site has reached the surface water, then the person responsible for conducting the remediation shall conduct a site investigation of surface water and sediment to determine if there is any exceedance of any aquatic or human health based surface water quality standard, ecological screening criterion, or residential direct contact soil remediation standard and shall:

1. Collect a sufficient number of surface water and sediment samples to evaluate for the presence of contamination, biasing the sampling to the suspected locations of greatest contamination, both horizontally and vertically;

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2. Use appropriate sampling methods; and

3. Use appropriate analytical methods.

(c) The person responsible for conducting the remediation shall evaluate the results of the surface water and sediment site investigation as follows:

1. If any aquatic surface water quality standard or ecological screening criterion for surface water is exceeded, conduct a remedial investigation of ecological receptors pursuant to N.J.A.C. 7:26E-4.8;

2. If any human health based surface water quality standard is exceeded, conduct a remedial investigation of surface water pursuant to N.J.A.C. 7:26E-4.4;

3. If any ecological screening criterion for sediments is exceeded, conduct a remedial investigation of ecological receptors pursuant to N.J.A.C. 7:26E-4.8; and

4. If there is evidence of human exposure to the sediment, compare the sediment sample results to the residential direct contact soil remediation standard. If any residential direct contact soil remediation standard is exceeded, the person responsible for conducting the remediation shall conduct a remedial investigation of soil pursuant to N.J.A.C. 7:26E-4.2.

7:26E-3.7 Site investigation - building interiors

(a) The person responsible for conducting the remediation who is subject to N.J.A.C. 7:26E-3.3(b) shall conduct a site investigation of a building interior in order to determine whether:

1. Contaminants inside the building have the potential to migrate to the environment outside the building; or

2. Contaminants outside the building have the potential to migrate into the building.

(b) If the concentration of any contaminant identified during this part of the site investigation exceeds any remediation standard outside the building, then the person responsible for conducting the remediation shall conduct a remedial investigation necessary for the impacted media pursuant to N.J.A.C. 7:26E-4.

7:26E-3.8 Site investigation - natural background investigation of soil and ground water

(a) If during the site investigation, any contaminant that may be naturally occurring is found in soil at any area of concern in excess of a soil remediation standard, then the person responsible for conducting the remediation may investigate the extent to which the concentration of the contaminant in soil may be due to natural background. This investigation shall be conducted by:

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1. For sites where the historic fill material extends beyond the property boundary, submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, using the footprint of the property as the boundaries of the ground water classification exception area; or

2. For sites where the extent of historic fill material is contained within the property boundaries, either:

i. Conduct a remedial investigation of the ground water pursuant to N.J.A.C. 7:26E-4.3 to identify the extent of the contaminant plume and submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, identifying the known extent of the ground water contamination associated with the historic fill; or

ii. Submit a proposed ground water classification exception area prepared pursuant to N.J.A.C. 7:26C-7.3, in the remedial investigation report prepared pursuant to N.J.A.C. 7:26E-4.9, using the footprint of the property as the boundaries of the ground water classification exception area.

(c) The person responsible for conducting the remediation shall conduct a remedial investigation of each area of concern located within or situated upon the historic fill material independently of the remedial investigation of the historic fill material itself.

(d) If at any time during the remedial investigation of historic fill material the person responsible for conducting the remediation encounters any material that does not meet the definition of historic fill material because it includes material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slag, tailings or is otherwise not historic fill material, then the person responsible for conducting the remediation shall conduct a remedial investigation of each such area as a separate area of concern.

7:26E-4.8 Remedial investigation of ecological receptors

(a) The person responsible for conducting the remediation shall conduct a remedial investigation of ecological receptors by determining if a contaminant migration pathway exists from the site or area of concern to the environmentally sensitive natural resource.

(b) If a contaminant migration pathway has been identified pursuant to (a) above, the person responsible for conducting the remediation shall determine if contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource exceed any ecological screening criterion or any aquatic surface water quality standard.

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(c) If contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource exceed any ecological screening criterion or any aquatic surface water quality standard, then the person responsible for conducting the remediation shall:

1. Delineate the horizontal and vertical extent of the contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource to any applicable ecological screening criterion and aquatic surface water quality standard; and
2. Conduct an ecological risk assessment for each contaminant of ecological concern to determine:
 - i. The past, current and future impacts of the contamination on ecological receptors;
 - ii. The ecological risk-based remediation goals; and
 - iii. The risk management strategies to be implemented;
3. Not implement any remedial action without the Department's prior written approval of the final remediation goal if the final remediation goal is something other than the ecological screening criterion.

(d) If a contaminant migration pathway is not identified or if contaminant concentrations in the contaminant migration pathway or environmentally sensitive natural resource do not exceed any ecological screening criterion or any aquatic surface water quality standard, no further ecological evaluation is required pursuant to this section.

7:26E-4.9 Remedial investigation report

(a) The person responsible for conducting the remediation shall prepare a remedial investigation report that presents and discusses all of the information required to be identified or collected pursuant to N.J.A.C. 7:26E-4.1 through 4.8, and shall include the following:

1. The general reporting requirements referenced in N.J.A.C. 7:26E-1.6;
2. A presentation and discussion of all of the information identified or collected, pursuant to N.J.A.C. 7:26E-1.10 through 1.16 and an updated receptor evaluation on a form found on the Department's website at www.nj.gov/dep/srp/srra/forms;
3. A description of each interim remedial measure implemented pursuant to N.J.A.C. 7:26E-1.10;
4. A description of each area of concern being investigated, including its operational history unless this information has already been provided;

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Recovery Act, N.J.S.A. 13:1K-6 et seq., and the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B, the regulatory timeframe for completing the remedial investigation and submitting a remedial investigation report that is listed at (a)2 and 3 above, may be lengthened by one year.

(c) If the person responsible for conducting the remediation lengthens the submittal date for the remedial investigation report pursuant to (b) above, the person responsible for conducting the remediation shall notify the Department at least 30 days prior to the submittal date for the remedial investigation report established pursuant to (a) above, using a form available on the Department's website at www.nj.gov/dep/srp/srra/forms. Information to be supplied by filling out the form includes:

1. Site identification information;
2. Reason to lengthen the timeframe;
3. The name of the responsible entity and a certification statement; and
4. The name of the licensed site remediation professional and a certification statement.

(d) Any person responsible for conducting remediation that is not subject to liability under N.J.S.A. 58:10-23.11g and is one of the following, is exempt from the regulatory timeframes outlined in (a) above:

1. A non-profit organization that meets the definition set forth at 26 U.S.C. § 501(c)3, unless that organization is established by or funded by another person that is subject to liability under N.J.S.A. 58:10-23.11g for that site; or
2. A governmental entity that is exempt from liability pursuant to N.J.S.A. 58:10-23.11g.d(4).

(e) The person responsible for conducting the remediation may request an extension of the applicable regulatory timeframe in (a) above, pursuant to the procedure outlined in the Administrative Requirements for the Remediation of Contaminated Sites, at N.J.A.C. 7:26C-3.2.

SUBCHAPTER 5. REMEDIAL ACTION

7:26E-5.1 Remedial action requirements

(a) The purpose of a remedial action is to implement a remedy that removes, treats, or isolates contamination, and that is protective of the public health, safety and the environment.

(b) The person responsible for conducting the remediation shall implement a remedial action when:

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1. The concentration of any contaminant exceeds any applicable remediation standard;
2. The concentration of any contaminant exceeds any aquatic surface water quality standard or any ecological screening criterion; or
3. That person is ordered to do so by a court or the Department.

(c) The person responsible for conducting the remediation shall conduct the remedial action within the applicable regulatory timeframe listed in N.J.A.C. 7:26E-5.8 by:

1. Implementing all remedial actions required to address the contamination at a site, pursuant to the requirements of this subchapter;
2. Submitting a remedial action report for all remedial actions at the site to the Department pursuant to N.J.A.C. 7:26E-5.7; and
3. Insuring that a licensed site remediation professional submits a final remediation document to the Department pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-6.2.

(d) The person responsible for conducting the remediation shall ensure that each remedial action:

1. Is protective of public health, safety and the environment;
2. Uses any required engineering and institutional controls in conjunction with a remedial action permit, whenever a restricted use remedy or a limited restricted use remedy is implemented to remediate a site;
3. Does not in itself cause an uncontrolled or unpermitted discharge or transfer of contaminants from one medium to another;
4. Complies with all applicable remediation standards in effect at the time the remedial action workplan was approved by the Department or a licensed site remediation professional, provided, however, that if an applicable numeric remediation standard decreases by an order of magnitude or more prior to the issuance of a final remediation document for the site being remediated, the person responsible for conducting remediation shall conduct all additional remedial action necessary to comply with the revised remediation standard;
5. Complies with applicable Federal, State, and local laws and regulations, including, without limitation, the provisions of the Pinelands Protection Act, P.L. 1979, c.111 (N.J.S.A. 13:18A-1 et seq.), any rules promulgated pursuant thereto, and the provisions of section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 4711; and
6. Does not in itself cause a natural resource injury.

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(e) The person responsible for conducting the remediation shall treat or remove free product and residual product to the extent practicable, or contain free product and residual product when treatment or removal is not practicable. Monitored natural attenuation of free product and residual product is prohibited.

(f) The person responsible for conducting the remediation shall submit a remedial action workplan prepared pursuant to N.J.A.C. 7:26E-5.5 or a corrective measures study work plan prepared pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., to the Department for approval when the remediation is being conducted:

1. Partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. and is a priority site under the Government Performance and Results Act, 40 U.S.C. §§ 11101 et seq.;

2. At a site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601; or

3. At a Federal facility that seeks or is required to obtain the Department's remedial concurrence.

7:26E-5.2 Specific remedial action requirements

(a) The person responsible for conducting the remediation shall:

1. Select a remedial action that will prevent further exposure of any receptor to any residual contamination;

2. Develop and implement a monitoring program that will effectively monitor the performance of the remedial action;

3. Demonstrate compliance with the remediation standard or ecological risk-based remediation goal established pursuant to N.J.A.C. 7:26E-4.8 by:

- i. Collecting a sufficient number of samples in appropriate locations to confirm the effectiveness of the remedial action:

- ii. Collecting samples using appropriate sampling methods; and

- iii. Analyzing samples for the contaminants of concern using appropriate analytical methods;

4. File a deed notice pursuant to N.J.A.C. 7:26C-7.2 when implementing a soil remedial action where the residual contaminant concentrations remaining will exceed the residential direct contact soil remediation standards; and

